

**THE OFFICE OF STATE ENGINEER
OF THE STATE OF NEVADA**

IN THE MATTER OF APPLICATIONS 41833)
AND 41834 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE PUMPERNICKEL)
VALLEY GROUNDWATER BASIN (065),)
HUMBOLDT COUNTY, NEVADA.)

RULING

4822

GENERAL

I.

Application 41833 was filed on July 18, 1980, by Elizabeth Hipsley to appropriate 5.4 cubic feet per second (cfs) of underground water for the irrigation of 320 acres of land within the W $\frac{1}{2}$ of Section 16, T.34N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 16.¹

II.

Application 41834 was filed on July 18, 1980, by Carl Hipsley to appropriate 5.4 cfs of underground water for the irrigation of 320 acres of land within the E $\frac{1}{2}$ of Section 16, T.34N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 16.²

FINDINGS OF FACT

I.

Applications 41833 and 41834 were filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of the applicant's respective Desert Land Entry applications. By letter dated September 8, 1999, the United States Department of the Interior, Bureau of Land Management (BLM) was requested to provide information to the office of the State Engineer relating to the current status of the Carl Hipsley and Elizabeth Hipsley Desert

¹ File No. 41833, official records in the office of the State Engineer.

² File No. 41834, official records in the office of the State Engineer.

Land Entry applications.^{1,2} A timely response from the BLM was received in the office of the State Engineer which indicated that the applicants' case files had been closed by the BLM in 1996. The State Engineer finds that the applicants' attempts to gain control of the places of use described under Applications 41833 and 41834 have been terminated by the proper governing federal agency.^{1,2}

II.

A water right application is filed to request an appropriation of water to be used for a specific purpose within a well defined place of use which is represented under Applications 41833 and 41834 as the irrigation of two separate 320 acre parcels of land which were to be removed from federal jurisdiction by the approval of the applicant's respective Desert Land Entry applications. The Desert Land Entry applications filed by Carl and Elizabeth Hipsley were closed by the BLM with the ownership of the land requested for removal retained by the federal government. The State Engineer finds that the purposes for which Applications 41833 and 41834 were filed no longer exist, therefore, the necessity to divert water as proposed under the subject applications has ceased.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

A. there is no unappropriated water at the proposed source;

³ NRS Chapters 533 and 534.

⁴ NRS § 533.370(3).

- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

A water right application is filed to appropriate water for a specific purpose which in the case of Applications 41833 and 41834 is the irrigation of separate 320-acre parcels of land that were to be transferred from the federal government to the applicants' control through the approval of their Desert Land Entry applications. These attempts to transfer ownership of the land described within the places of use under Applications 41833 and 41834 were terminated when the BLM closed the applicants' Desert Land Entry applications. The BLM's closure of the subject Desert Land Entry applications removes the purposes for which Applications 41833 and 41834 were filed. The State Engineer concludes that to approve water right permits for projects that no longer exist would threaten to prove detrimental to the public interest.

RULING

Applications 41833 and 41834 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/cl

Dated this 7th day of
December, 1999.